81-2210

No.

Office - Supreme Court, U.S.
FILED
[illegible] 1982
[illegible] STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREYHOUND LINES, INC., *Petitioner*

v.

RICHARD PRICE, *Respondent*

RESPONDENT'S BRIEF IN OPPOSITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

WAYNE M. MANSULLA
ASHCRAFT & GEREL
2000 L Street, N.W.
Suite 700
Washington, D.C. 20036
Attorney for Respondent

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTIONS PRESENTED

Does the explicit statutory language of § 21(c) of the Longshormen's and Harbor Workers' Compensation Act, 33 U.S.C. § 921(c) (1976), which defines subject matter jurisdiction, support a Circuit Court's dismissal of a petitioner's appeal for lack of subject matter jurisdiction where petitioner failed to comply with the statute's requirement?

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
RELEVANT STATUTES	2
STATEMENT OF THE CASE	6
SUMMARY OF ARGUMENT	7
ARGUMENT	8
I. The Fourth Circuit Properly Dismissed Pettioner's Claim For Lack Of Subject Matter Jurisdiction, And Correctly Denied Its Motion To Transfer, Petition For Rehearing And Suggestion For Rehearing *En Banc*, For Failing To Meet The Explicit Requirement Of 33 U.S.C. § 921(c)	8
II. No Circuit Would Allow Petitioner To Transfer His Case Where The Court Lacks Subject Matter Jurisdiction As A Result Of Petitioner's Error In Filing An Appeal With The Wrong Court	12
III. Congress Recently Enacted Legislation Which Resolves The Issue Of Transfer Where A Court Lacks Subject Matter Jurisdiction, And Which Provides The Circuits With Federal Authority For Future Cases	14
CONCLUSION	15

TABLE OF AUTHORITIES

CASES: Page

American Telephone & Telegraph Co. v. *FCC*, 519 F.2d 322 (2d Cir. 1975) 12, 13

Atlantic Ship Rigging co. v. *McLelland*, 288 F.2d 589 (3d Cir. 1961) 9, 10

Bassett v. *Massman Construction Co.*, 120 F.2d 230 (5th Cir. 1941), *cert. denied*, 314 U.S. 648 (1941) 10

Buckeye Power v. *EPA*, 481 F.2d 162 (6th Cir. 1973) . 12

Continental Fire & Casualty Insurance Co., v. *O'Leary*, 236 F.2d 282 (9th Cir. 1956) 10

Dantes v. *Western Foundation Association*, 614 F.2d 299 (1st Cir. 1980) 9, 10

Dayton Power & Light v. *EPA*, 520 F.2d 703 (6th Cir. 1975) 12

Dunn v. *United States Department of Agriculture*, 654 F.2d 64 (Ct. Cl. 1981) 13

Eastern Airlines v. *CAB*, 354 F.2d 507 (D.C. Cir. 1965) 12

Goldlawr v. *Heiman*, 369 U.S. 463 (1962) 12

Hohensee v. *News Syndicate, Inc.*, 286 F.2d 527 (3d Cir. 1961) 9

Hughes v. *Quigley*, 184 F. Supp. 568 (D.N.J. 1960) ... 10

Independent Pier Co. v. *Norton*, 47 F. Supp. 1020 (E.D. Pa. 1942) 10

Internatio-Rotterdam, Inc. v. *Thomsen*, 218 F.2d 514 (4th Cir. 1955) 12

National Resources Defense Council v. *EPA*, 465 F.2d 492 (1st Cir. 1972) 12

Panhandle Eastern Pipeline Co. v. *FPC*, 343 F.2d 905 (8th Cir. 1965) 9, 12

Pearce v. *Director, Office of Workers' Compensation Programs*, 603 F.2d 763 (9th Cir. 1979) 9, 13

STATUTES:

28 U.S.C. § 1254(1) (1976) 2

28 U.S.C. § 1404(a) (1976) 3, 11

28 U.S.C. § 1406(a) (1976) 3, 11, 12

Table of Authorities Continued

Page

Federal Courts Improvement Act, Pub. L. No. 97-164 § 1631, 96 Stat. 25, 55 (1982) (to be codified at 28 U.S.C. § 1631) 4, 11, 14

28 U.S.C. § 2112(a) (1976) 3, 4, 11, 12

28 U.S.C. § 2342 (1976) 13

28 U.S.C. § 2343 (1976) 13

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-952 (1976) 6, 8

Longshoremen's and Harbor Workers' Compensation Act, Pub. L. No. 803, § 21(b), 44 Stat. 1436 (1927) (currently codified at 33 U.S.C. §§ 901-952 (1976) . 10

33 U.S.C. § 908(f) (1976) 4, 5, 6

33 U.S.C. § 921(c) (1976) 1, 5, 6, 7, 8, 9, 10, 11

36 D.C. Code §§ 501-502 (1973 Ed.) 2, 3, 6

MISCELLANEOUS:

S. Rep. No. 275, 97th Cong. 1st Sess. 11 (1981) 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No.

GREYHOUND LINES, INC., *Petitioner*

v.

RICHARD PRICE, *Respondent*

RESPONDENT'S BRIEF IN OPPOSITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Respondent respectfully requests this Court to deny the Petition for Writ of Certiorari to Review the Unanimous Order of the United States Court of Appeals for the Fourth Circuit (No. 81-19334), dismissing Greyhound's appeal for lack of subject matter jurisdiction under § 21(c) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 921(c) (1976), and denying Greyhound's Motion to Transfer and Petitions for Rehearing and Suggestion for Rehearing *en banc*.

OPINIONS BELOW

The decision and order (No. 79-DCWC-123) of the Administrative Law Judge, Office of Administrative Law Judges, United States Department of Labor, issued March 17, 1980, is unreported, but appears as Petitioner's Appendix D (App. 6a).

The order (No. 80-348) of the Benefits Review Board, United States Department of Labor, dated August 28, 1981, is reported at 14 BRBS 439 (1982) and appears as Petitioner's Appendix (App. 3a). The order of the United States Court of Appeals for the Fourth Circuit, from which certiorari is sought, dated January 4, 1982, is unreported and appears as Petitioner's Appendix B (App. 2a). The order of the Court of Appeals for the Fourth Circuit denying a Petition for Rehearing and a Suggestion for Rehearing *en banc*, dated March 1, 1982, is unreported but appears as Petitioner's Appendix A (App. 1a).

JURISDICTION

The Court of Appeals for the Fourth Circuit decided this case on January 4, 1982 (App. 2a). A timely Petition for Rehearing and Suggestion for Rehearing *en banc*, was filed on January 18, 1982, and denied on March 1, 1982 (App. 1a). The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1) (1976).

RELEVANT STATUTES

The relevant statutory provisions are as follows:

District of Columbia Code:

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act as made applicable to the District of Columbia.

> The provisions of Chapter 18 of title 33 U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of

Columbia, and the term "employee" shall be held to mean every employee of any such person.

United States Code, Title 28:

§ 1404 Change of venue.

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might been brought.

§ 1406 Cure of defects.

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

* * *

§ 2112 Record on review and enforcement of agency orders.

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part therof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or

held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

§ 1631. Transfer to cure want of jurisdiction (Federal courts Improvement Act, Pub. L. No. 97-164, § 1631, 96 Stat. 25, 55 (1982), amending 28 U.S.C. § 301(a) (1970).

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is tranferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

United States Code, Title 33:

§ 908 Compensability for disability.

Compensation for disability shall be paid to the employee as follows:

* * *

(f) Injury increasing disability: (1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of section 8(c) (1)- (20), the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only.

(2) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 44.

§ 921 Review of Compensation Order.

* * *

(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. . .

STATEMENT OF THE CASE

Respondent, Richard Price (Price), suffered a back injury while employed as a long-distance bus driver with Petitioner, Greyhound Lines, Inc. (Greyhound). Price filed a claim pursuant to the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§ 501-502 (1973 Ed.), which incorporated the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-952 (1976) ("LHWCA") (App. 2). The injury occurred on August 11, 1977, in Bloomsburg, Pennsylvania. Price resided in Arbutus, Maryland, at the time of the accident, and in Fort Orange, Florida, at the time of a hearing before an Administrative Law Judge of the United States Department of Labor. Price worked out of Greyhound's bus terminal in Washington, D.C. At the hearing before the Administrative Law Judge, neither Greyhound nor Price disputed the fact of injury. Price claimed that he was permanetly and totally disabled due to his injury. However, Greyhound argued that Price's permanent total disability was also due to his previous cardiovascular impairment. If this cardiovascular impairment did contribute to Price's disabilty, Greyhound argued that its liability could be limited to one hundred and four weeks of compensation payments pursuant to 33 U.S.C. § 908(f) (1976).

After a hearing and the production of witnesses and medical reports, the Administrative Law Judge rejected Greyhound's position that its liability should be limited, and ruled that the prior cardiovascular disease did not contribute to Price's disability. (App. 18a). On appeal, the Benefits Review Board affirmed the decision of the Administrative Law Judge (App. 5a).

Greyhound appealed the Board's ruling to the United States Court of Appeals for the Fourth Circuit. The

Benefits Review Board filed its certified record with the court. Citing lack of subject matter jurisdiction under 33 U.S.C. § 921(c) (1976), Price subsequently filed a Motion to Dismiss and stated that the case properly belonged in the Third Circuit, pursuant to 33 U.S.C. § 921(c) because that is "the circuit where the injury occurred." Greyhound opposed the Motion to Dismiss, and also moved to transfer the case from the Fourth Circuit to the Third Circuit, where Price did not dispute jurisdiction or venue.

Without hearing oral argument, the Fourth Circuit granted Respondent's Motion to Dismiss (App. 2a). Although the Court of Appeals did not explicitly rule upon Greyhound's Motion to Transfer, the court implicitly rejected Greyhound's motion when it granted Price's Motion to Dismiss and denied Greyhound's Petitions for Rehearing and Suggestion for Rehearing *en banc* (App. 1a).

SUMMARY OF ARGUMENT

This Court should deny Greyhound's writ of certiorari, and decline to review the Fourth Circuit's dismissal of Greyhound's claim and denial of its Motion to Transfer and Petitions for Rehearing and Suggestion for Rehearing *en banc*. In its appeal to the Fourth Circuit, Greyhound failed to comply with LHWCA's explicit requirement for obtaining a review of a final order of the Benefits Review Board in the circuit in which the injury occurred. The First Circuit has construed this language as defining the subject matter jurisdiction of the federal circuit court of appeals. As a result, the First Circuit position, now adopted by the Fourth Circuit, mandates that Greyhound's claim be dismissed for lack of subject matter jurisdiction. Although Greyhound cites the Ninth Circuit as supporting its Motion to Transfer, the Ninth Circuit position relies on inapplicable statutory and case

law authority. Finally, recent congressional legislation has resolved the issue by providing the circuits with guidelines for future cases, thus obviating the importance of the case.

ARGUMENT

I. The Fourth Circuit Properly Dismissed Petitioner's Claim For Lack Of Subject Matter Jurisdiction, And Correctly Denied Its Motion To Transfer, Petition For Rehearing And Suggestion For Rehearing *En Banc*, For Failing To Meet The Explicit Requirement Of 33 U.S.C. § 921(c)

The Fourth Circuit dismissed petitioner's claim for lack of subject matter jurisdiction because Greyhound failed to comply with the applicable provision of § 921(c) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-952 (1976), which provides that:

> Any person adversely affected or aggrieved by a final order of the [Benefits Review] Board may obtain a review of that order in the United States Court of Appeals for the circuit *in which the injury occurred*. . .
> (emphasis added).

The record indicates that Price's injury occurred in the Third Circuit, but Greyhound filed an appeal with the Fourth Circuit. At page 27 of the transcript of the Department of Labor administrative hearing, counsel for Price stated: "We stipulate that. . . the injury occurred in Bloomsburg, Pennsylvania." Title 28 U.S.C. § 41 (1976) lists the states that compose each circuit. Section 41 lists the Commonwealth of Pennsylvania as part of the Third Circuit. Therfore, the Fourth Circuit rightly concluded

that it lacked subject matter jurisdiction over Greyhound's complaint.[1]

In *Dantes* v. *Western Foundation Association*, 614 F.2d 299 (1st Cir. 1980), a case identical to the case at bar, the First Circuit held that it has no authority to transfer a case where it lacks subject matter jurisdiction under § 21(c) of the LHWCA, 33 U.S.C. § 921(c). The First Circuit specifically noted: "Petitioners urge that we transfer the case to the Second Circuit rather than dismiss it. We cannot do so. 'Where as here, the court lacks jurisdiction over the subject matter. . . [a defect] which precludes it from acting at all, a *fortiori* a court lacks power to transfer.' " *Dantes*, *supra* at 301, citing *Atlantic Ship Rigging Co.* v. *McLelland*, 288 F.2d 589, 591 (3d Cir. 1961);[2] *Panhandle Eastern Pipeline Co.* v. *FPC*, 343 F.2d 905, 908 (8th Cir. 1965). In adopting this view, the First Circuit rejected the Ninth Circuit's holding in *Pearce* v. *Director, Office of Workers' Compensation Programs*, 603 F.2d 763 (9th Cir. 1979), a case which Greyhound relies on to argue that a court has authority to

---

[1] Although Greyhound argues that § 21(c) of the LHWCA may confer venue and not subject matter jurisdiction, it cites no applicable authority. Counsel for Price assumes for the purpose of this Brief that the statute confers only subject matter jurisdiction.

[2] On page 10 of Greyhound's Petition for a Writ fo Certiorari to the United States Court or Appeals for the Fourth Circuit, Greyhound contends that the Third Circuit in *Atlantic Ship Rigging Co.*, *supra*, ruled upon a motion to transfer despite the court's conclusion that it lacked actual authority to transfer. However, counsel for Price notes that the extent of the Third Circuit's ruling is two sentences which analogize the absence of authority to transfer in *Atlantic Ship Rigging Co.* to a case where the court lacked jurisdiction over the person. *Atlantic Ship Rigging Co.*, *supra* at 590-91, citing *Hohensee* v. *News Syndicate, Inc.*, 286 F.2d 527 (3d Cir. 1961).

transfer a case even though it lacks subject matter jurisdiction.

Prior to the 1972 amendments to the LWHCA, parties in compensation proceedings filed for review of compensation orders in the "Federal District Court for the judicial district in which the injury occurred. . ." Longshoremen's and Harbor Workers' Compensation Act, Pub. L. No. 803, § 21(b), 44 Stat. 1436 (1927). The First Circuit in reading the pre-1972 cases "[c]onsistently interpreted [the LHWCA] to confer jurisdiction only upon the district court within whose territorial jurisdiction the injury occurred." *Dantes, supra* at 300, citing *Atlantic Ship Rigging Co.* v. *McLelland*, 288 F.2d 589, 590 (3d Cir. 1961); *Continental Fire & Casualty Insurance Co.* v. *O'Leary*, 236 F.2d 282, 283-84 (9th Cir. 1956); *Bassett* v. *Massman Construction Co.*, 120 F.2d 230, 234 (5th Cir. 1941), *cert. denied*, 314 U.S. 648 (1941); *Hughes* v. *Quigley*, 184 F.Supp. 568 (D.N.J. 1960); *Independent Pier Co.* v. *Norton*, 47 F.Supp. 1020 (E.D. Pa. 1942). Abiding by the strict requirements of the LHWCA, the First Circuit concluded:

> We see no reason to depart from the long settled provisions of the Longshoremen's Act and therefore, construe 33 U.S.C. § 921(c) as conferring exclusive jurisdiction to hear a petition for review of a final order of the [Benefits Review Board] in the court of appeals for the circuit in which the injury occurred. *Dantes, supra* at 300-01.

The Fourth circuit's dismissal of petitioner's Motion to Transfer complies with the First Circuit's reasoning in *Dantes* and the First Circuit's interpretation of pre-1972 cases dealing with the issue before this Court. Moreover, Congessional Committee Reports lend further support to the Fourth Circuit's dismissal of Greyhound's appeal. While no federal legislation exists affecting the transfer

or the case at bar, a Senate Judiciary Committee Report on a newly drafted act seemingly upholds the Fourth Circuit's dismissal. *See*, discussion of Federal Courts Improvement Act, *infra*. Addressing the issue of transfer where the court lacked subject matter jurisdiction in cases prior to the enactment of the Federal Courts Improvement Act, the committee stated that: "At present, the litigant's main protective device, absent an adequate transfer statute, is the wasteful and costly one of filing in two or more courts at the same time." S. Rep. No. 275, 97th Cong., 1st Sess. 11 (1981). Thus, absent an explicit transfer statute, the Senate judiciary Committee Report fails to recognize any remedy for Greyhound.

Rule 12)h)(3) of the Federal Rules of Civil Procedure, provides that: "Whenever it appears. . . that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the action," Fed. R. Civ. P, 12(h)(3) (emphasis added). This rule supports the Fourth Circuit's dismissal of Greyhound's claim. Thus, the LHWCA's explicit jurisdictional requirement mandates that this Court deny *certiorari*.

Greyhound attempts to circumvent the First Circuit's postion by analogizing § 921(c) to other federal legislation, particularly 28 U.S.C. §§ 1404(a), 1406(a) and 2112(a) (1976). However, these statutes have no bearing on § 921(c) or the case at bar. Sections 1404(a) and 1406(a) address venue and not subject matter jurisdiction. Similarly, § 2112(a) is inapposite because it establishes broad guidelines for the review and enforcement of agency orders, and it authorizes transfer only where "proceedings have been instituted in two or more courts of appeal." 28 U.S.C. § 2112(a) (1976). Unlike § 2112(a), the case at bar specifically involves review of a workmen's compensation order under § 921(c), which narrowly de-

fines the subject matter jurisdiction of circuit courts when reviewing an order of the Benefits Review Board. Therefore, Greyhound fails to cite pertinent statutory authority to support its Motion to Transfer.

II. No Circuit Would Allow Petitioner To Transfer His Case Where The Court Lacks Subject Matter Jurisdiction As A Result Of Petitioner's Error In Filing An Appeal With The Wrong Court

Greyhound not only relies on inapplicable statutes, but also asserts that the "greater weight of reasoned authority supports its Motion to Transfer." Greyhound cites opinions from various circuit and federal courts in support of its position. However, these cases involved personal jurisdiction, venue or transfer pursuant to § 2112(a). *See, Internatio-Rotterdam, Inc.*, v. *Thomsen*, 218 F.2d 514 (4th Cir. 1955) (lack of personal jurisdiction in admiralty cases); *Goldlawr* v. *Heiman*, 369 U.S. 463 (1962) (lack of personal jurisdiction and improper venue under 28 U.S.C. § 1406(a) (1976)); *National Resources Defense Council* v. *EPA*, 465 F.2d 492 (1st Cir. 1972) (Petition for Review was filed in all circuits and transfer was allowed pursuant to 28 U.S.C.§ 2112(a) (1976)); *Eastern Airlines* v. *CAB*, 354 F.2d 507 (D.C. Cir. 1965) (change of venue); *Panhandle Eastern Pipeline Co.* v. *FPC*, 343 F.2d 905 (8th Cir. 1965) (change of venue); *Dayton Power & Light* v. *EPA*, 520 F.2d 703 (6th Cit. 1975) (transfer pursuant to 28 U.S.C. § 2112(a) (1976) where appeals were filed in more than one circuit and distinguishing *Buckeye Power* v. *EPA*, 481 F.2d 162 (6th Cir. 1973)); and *American Telephone and Telegraph Co.* v. *FCC*, 519 F.2d 322 (2d Cir. 1975) (transfer pursuant to 28 U.S.C. § 2112(a) (1976) where related proceedings were pending in another court of appeals).

Greyhound also relies on the United States Court of Claims holding in *Dunn* v. *United States Department of Agriculture*, 654 F.2d 64 (Ct. Cl. 1981). The unusual circumstances of *Dunn* provide an explanation for the United States Court of Claims' willingness to transfer. Following a final order denying Dunn's claim, the Merit System Protection Board incorrectly advised Dunn that he could file for review with the United States Court of Claims. However, Dunn's proper forum for review was a United States Court of Appeals. Upon discovering this error, Dunn moved for and was granted a transfer to the proper forum. Unlike the facts in *Dunn*, the case at bar contains no unusual circumstances warranting a grant of Greyhound's Motion to Transfer. Lastly, the decision in *Dunn* erroneously cites the Second Circuit's holding in *American Telephone & Telegraph Co.* v. *FCC*, *supra*, as support. *Dunn*, *supra* at 68. However, unlike *Dunn*, the Second Circuit explicitly recognized that proper venue and jurisdiction existed in *American Telephone & Telegraph Co.* The Second Circuit held that" "[v]enue and jurisdiction are proper in both the District of Columbia Court, 28 U.S.C. §§ 2342, 2343, and thus do not present a problem." *American Telephone & Telegraph Co.*, *supra* at 325.

Although Greyhound asserts that the "great weight of reasoned authority" supports its Motion to Transfer where a court lacks subject matter jurisdiction, Greyhound cites cases in which courts have transferred claims due to improper venue or personal jurisdiction, or due to unusual circumstances. Consequently, the Ninth circuit's position in *Pearce* has no support in other circuits. Thus, the case law reveals that no circuit court of appeals has allowed the transfer of a case where that court lacks subject matter jurisdiction.

III. Congress Recently Enacted Legislation Which Resolves The Issue Of Transfer Where A Court Lacks Subject Matter Jurisdiction, And Which Provides The Circuits With Federal Authority For Future Cases

As a basis for this Court to review its Motion to Transfer, Greyhound argues that the absence of statutory authority has prevented uniformity among the circuits. On April 2, 1982, Congress enacted the Federal Courts Improvement Act, which provides:

> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is want of jursidiction, the court *shall*, if it is in the interest of justice, *transfer* such action or appeal to any other court in which the action or appeal to any other court in which the action or appeal could have been brought at the time it was filed or noticed. . . Federal courts Improvement Act, Pub. L. No. 97-164, § 1631, 96 Stat. 25, 55 (1982) (Amending 28 U.S.C. § 301(a) (1970) (emphasis added).

Because the newly drafted act is not effective until October 1, 1982, Federal Courts Improvement Act, Pub. L. No. 97-164, § 402, 96 Stat. 25, 57 (1982), it does not apply to the case at bar. However, the statute does moot Greyhound's argument that this Court must grant *certiorari* to ensure a uniform approach to the issue presented. Thus, there is no need for this court to establish a uniform fule by accepting Greyhound's Petition for *Certiorari*.

CONCLUSION

Respondent, Richard Price, respectfully requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

WAYNE M. MANSULLA
ASHCRAFT & GEREL
2000 L Street, N.W.
Suite 700
Washington, D.C. 20036
Attorney for Respondent